

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TREMONT REALTY CAPITAL, INC., a
Massachusetts Corporation,
Plaintiff,

v.

PINNACLE GROUP, LLC, an Arizona limited
liability company; ADAMS CANYON RANCH,
LLC, an Arizona limited liability company,
John Lang, an individual; and Michael
Grady, an individual,
Defendants
and

PINNACLE GROUP, LLC, an Arizona limited
liability company; ADAMS CANYON RANCH,
LLC, an Arizona limited liability company,
John Lang, an individual; and Michael
Grady, an individual,
Counterclaimants,

v.

TREMONT REALTY CAPITAL, INC., a
Massachusetts Corporation,
Counter-Defendant,
and

PINNACLE GROUP, LLC, an Arizona limited
liability company; ADAMS CANYON RANCH,
LLC, an Arizona limited liability company,
John Lang, an individual; and Michael
Grady, an individual,
Third-Party Plaintiffs,

v.

FORTIS ADVISORS, LLC, an Arizona
limited liability company; TREMONT-FORTIS
REALTY CAPITAL, LLC, an unknown entity;
RUSSELL POSORSKE, an individual;
RICHARD C. GALLITTO, an individual;
DANIEL O. MEE, an individual,
Third-Party Defendants.

Case No. 04-11853-RGS

**WAIVER OF SERVICE OF SUMMONS
OF TREMONT-FORTIS REALTY
CAPITAL, LLC**

To: Attorney William J. Hunt of **Clark, Hunt & Embry**, at 55 Cambridge Parkway, Cambridge, Massachusetts,

I acknowledge receipt of your request that I, in my capacity as a corporate officer of third-party defendant Tremont-Fortis Realty Capital, LLC, waive service of a summons in the above-captioned matter, which is case number 04-11853-RGS in the United States District Court for the District of Massachusetts. I have also received a copy of the Third-Party Complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I, in my capacity as a corporate officer of third-party defendant Tremont-Fortis Realty Capital, LLC, agree to save the cost of service of a summons and an additional copy of the Third-Party Complaint in this lawsuit by not requiring that I, or Tremont-Fortis Realty Capital, LLC, on whose behalf I am acting as a corporate officer, be served with judicial process in the manner provided by Rule 4.

I, or Tremont-Fortis Realty Capital, LLC, on whose behalf I am acting as a corporate officer, will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me or Tremont-Fortis Realty Capital, LLC, if an answer or motion under Rule 12 is not served upon you within 60 days after April 29, 2005.

Date

May 26, 2005


Russell Posorske, in my capacity as a
corporate officer of
Tremont-Fortis Realty Capital, LLC

By His Counsel

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives services must within the time specified on the wavier form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of services was received.